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 14

15 UNITED STATES DISTRICT COURT
 16 SOUTHERN DISTRICT OF CALIFORNIA
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18 UNITED STATES EQUAL
 19 EMPLOYMENT OPPORTUNITY
 COMMISSION,
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 Plaintiff,
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 v.
 22 BAY CLUB FAIRBANKS RANCH, LLC
 23 d/b/a FAIRBANKS RANCH COUNTRY
 CLUB; FAIRBANKS RANCH
 24 COUNTRY CLUB, INC., and DOES 1-
 25 10, inclusive ,
 26 Defendants.

Case No.: 18cv1853-W-AGS

**DECLARATION OF EEOC TRIAL
 ATTORNEY CONNIE K. LIEM IN
 SUPPORT OF PLAINTIFF EEOC'S
 OPPOSITION TO DEFENDANT
 BAY CLUB'S MOTION TO
 DISQUALIFY**

1 I, Connie Liem, declare and state as follows:

2 1. I am a Trial Attorney employed at the Los Angeles District Office of the United
3 States Equal Employment Opportunity Commission (“EEOC”). I have personal
4 knowledge of the facts stated herein.

5 2. I am an attorney of record for the EEOC in this litigation.

6 3. At the deposition of Donna Gonser, which I took on November 21, 2019,
7 there was no testimony or indication that during the course of Gonser’s prior text
8 communications with Mark Kooreny, she sought legal advice from Kooreny, or that
9 Kooreny was acting in capacity as counsel as opposed to investigator/ witness, or even
10 simply in a social capacity.

11 4. As professional courtesy and in hopes of avoiding motion practice, I
12 nonetheless conferred in good faith with Mr. Allen, counsel for Defendant Bay Club
13 Fairbanks Ranch, LLC, both off and on the record on November 21, 2019 regarding the
14 communications/texts at issue.

15 5. In an abundance of caution, defense counsel Mr. Allen and I
16 memorialized an agreement on the record regarding the disputed text messages; namely,
17 to place all copies of the text messages into a sealed envelope. I extended this
18 professional courtesy to provide an opportunity for Defendant to support its assertion of
19 privilege. I agreed to maintain the envelope in a safe and secure location – and to refrain
20 from opening or using the contents – pending Defendant’s review of the communications
21 and response by December 3, 2019 as to whether any of the materials or texts were
22 privileged. Mr. Allen agreed to advise the EEOC by December 3, 2019 as to whether any
23 of the materials were privileged, and if so, to produce a redacted copy of the materials
24 and a privilege log regarding the privileged materials. I understood that if Defendant
25 contends that any of the texts were privileged, then it would confirm the assertion of
26 privilege in a privilege log as required under Fed.R.Civ.P. 26(b)(5). I agreed to destroy
27 all copies of the contents or return them to defense counsel *if* “everything is privileged,”
28 but Defendant has not made any showing that any of the disputed texts are privileged

1 under Fed.R.Civ.P. 26(b)(5) or the Court’s September 4, 2019 Discovery Order. Mr.
2 Allen and I further agreed that the envelope would remain sealed absent a Court or a
3 stipulation by the parties. The documents are currently sequestered pursuant to Fed. R.
4 Civ. P. 26(b)(5)(B). Neither the sequestered documents nor their contents have been
5 distributed to any person, including another EEOC attorney. No information based on
6 my quick review of the text messages on November 21, 2019, have been disseminated to
7 any other person, including another EEOC attorney.

8 6. It is my good faith belief that a) given the factual circumstances revealed at
9 Gonser’s November 21, 2019 deposition, b) the Court’s recent Orders, and c)
10 Defendant’s continuing failure to submit a sufficient privilege log in support of any
11 privilege, these sequestered text messages are in fact not privileged. As of this date,
12 Defendant has not produced a privilege log regarding the disputed texts.

13 7. I never conceded and/or informed Defendant or Mr. Allen that any part or all
14 of the disputed texts were privileged.

15
16
17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this 13th day of January 2020, in San Diego, California.

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20 By: S/ Connie K. Liem

21 Connie K. Liem

22 Email: connie.liem@eoc.gov

23 Attorney for Plaintiff EEOC
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